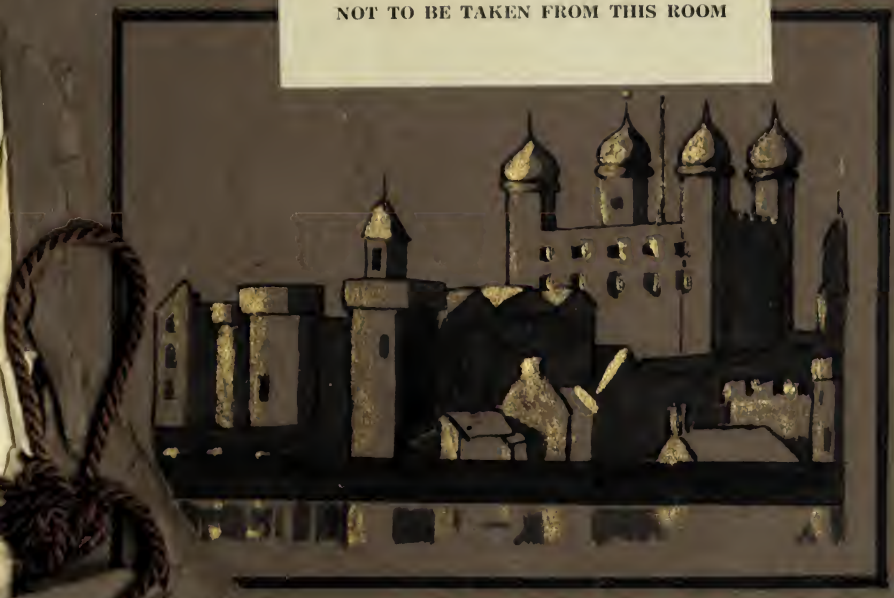

THE HOUSE OF LORDS

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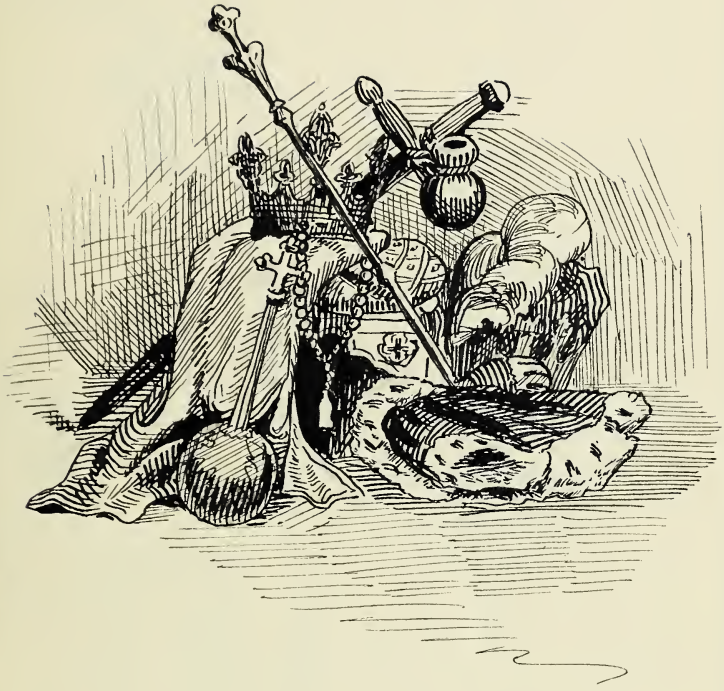
ITS PRESENT STATUS AND SUGGESTED REFORM

G. FRED McNALLY



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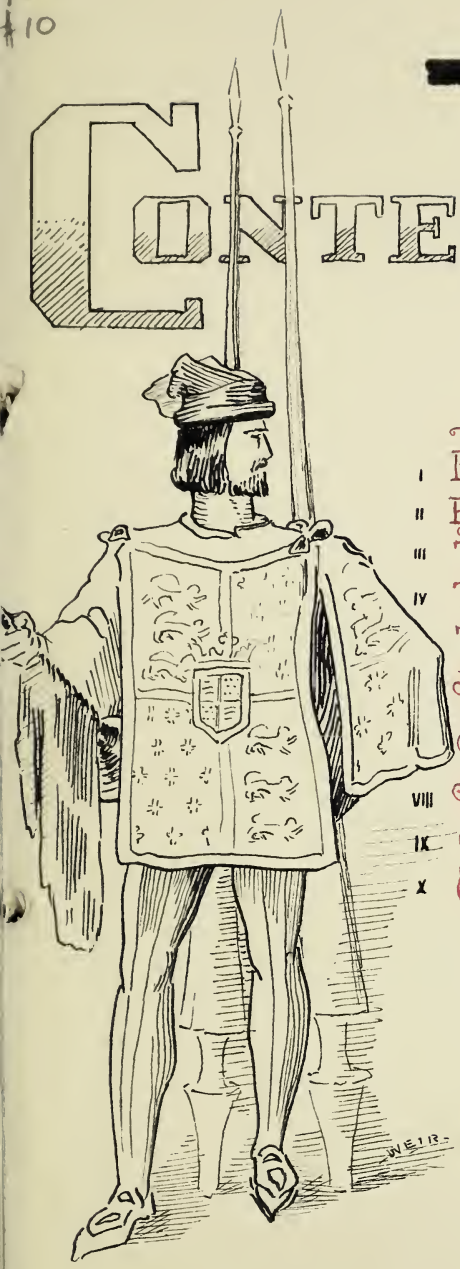

I.

The beginning of the history of this illustrious body is shadowed by the incompleteness of the records of the times before the Norman Conquest. There is evidence, however, that the Anglo-Saxon monarchs, after the union under Egbert recognized Earls, Bishops and abbots as lay and ecclesiastical magnates in the realm. At the shire moot or County Court the Earl and Bishop sat together for the dispensing of justice and were also summoned with the Abbots as Witan or Wise men to advise the King of England. It is clear, from the character of the work committed to these authorities--the office being at once military, judicial and administrative, that it had to be in the hands of men capable of executing it. Consequently, these titles were not origin-

ally in any sense hereditary. Since succession to the throne itself was not strictly hereditary, it is not surprising that the titles of the nobility were not regarded as fixed in any family.

When William the Conqueror came to England he found a Great Council composed of native Earls, Lords, Bishops and Abbots. He was too wise to seem to ignore this body so called a great meeting, at which a number of his Norman followers, being now Lords of England, also voted. William was thus elected King of England by the Witenagemot, the English members, doubtless, voting under compulsion.

In 1081 an Assembly was called to settle an ecclesiastical dispute. Those present are described as, " the Archbishop of Canterbury and all the other Bishops of the Land, Earls

and Barons." This document preserves the names of those composing the Council and it is a noticeable fact that many of these were members of William's Council in Normandy before the Conquest. "Thus," Pike says, " the first assembly in England to which the word Parliament has been applied, by any legal authority was an assembly resembling the House of Lords in its constitution, but consisting largely of foreigners."

In the reign of Henry II all met together in the great assembly at Clarendon. For greater convenience, however, many of the functions of this King's Court or Curia Regis, as it was now called, were discharged by a specially selected committee. Their work was still further lightened, by the sending forth of delegates into the shires to administer justice;

thus reducing the amount of judicial work to come before the assembly as a whole. In 1178 the King by the advice of the Sapientes--Witan, no longer--of his realm, chose five justices, two ecclesiastics and three laymen, "who should not depart from the King's Court, but should remain there to hear all the claims or plaints of the people. Nevertheless if any question should come before them which could not be brought to an end by them, it was to be presented to the King's hearing and determined as should please him and the Sapientores of the realm." Thus the full court appears to have retained its original constitution for cases of great weight and moment.

When the "Parliament" was extended in the thirteenth century, by the summoning of the

Knights and Burgesses, the King's Council viz. " the Prelates and Magnates, the Justices and others," held full control over the proceedings of the law courts of the realm and really constituted a court of appeal.

The growth of the hereditary right of title is worthy of note. Not until after the Conquest, as before mentioned, was the right of inheritance to an earldom or barony vested in any family. In the reign of Stephen it is recorded that the Earls of Hereford and Essex received their castles and lands in inheritance. Gradually this right was absorbed by other nobles in return for special services to the sovereign or as in the case of those nobles who held baronies by " writ of summons", the King gradually lost his power to refuse his summons.

to these people. Thus were combined the two principles of hereditary descent and the royal right of summons. To this was added the royal right of "Larony by patent." By this means the Crown adopted the method of ennobling by letter patent distinguished individuals, or others who had gained the royal favor.

Professor Freeman says, "The hereditary character came in like other things, step by step, by accident rather than design." It is now, however, a fixed principle. In summing up it may be said that all peers of England have seats in Parliament and may be conveniently arranged according to their five grades of which two, those of Earl and Baron were known in Saxon times while the title of Duke was first borne by Edward the Black Prince and those of Marquis and

and Viscount date respectively from 1785 and 1441.

The Lords Spiritual have always formed an important part of the House of Lords. In the days of the Witenagemot their influence was great. There was at first, no distinction between them and the Lords Temporal for all the Bishops were landed men. Later under Becket the clergy entered upon a struggle with the lay authority to secure for themselves the special privilege of being exempt from all secular jurisdiction. A partial success resulted in a change in the relationship of the two bodies. The reformation and consequent ruin of the Church authority together with the dissolution of the monasteries had a splendid influence in the House of Lords. Previous to this time the lay peers had

such a small and diminishing body--only twenty-nine temporal peers attended the Parliament of Henry VII. Even as late as 1601 the total number of peers summoned to Parliament was one hundred and thirty-nine.. Conditions were now reversed. By removing the mitred Abbots, the temporal peers were given a clear majority while the distribution of the vast monastic property among the great families increased their influence. The number of Spiritual Lords was placed at five and although by later acts this number has been slightly increased the church has never regained its old influence in the Upper House. In 1642 the Puritan House of Commons of the day forced through Parliament an Exclusion Bill which deprived the Bishops of all rights of representation in the Lords. But when the monarchy was re-established this Bill

was withdrawn and the Bishops resumed their attendance at Westminster.

The Union with Scotland introduced the representative and elective principles into the ancient House. Sixteen peers were now elected for the life time of each Parliament by their fellow peers. All other Scottish peers were disqualified and prevented from sitting in the House of Commons. This manifestly unjust restriction has been overcome by conferring peerages of Great Britain on eldest sons of Scotch peers. Consequently no great grievance is now felt to exist. This method of election and representation on the basis of a bare majority of their brother peers, after being given a lengthy trial, has not proved the unmixed success which advocates of this particular style of reform

could desire. The party in majority among the Scottish peers has always returned a solid body of sixteen supporters. The minority are thus entirely without representation.

With the Irish Union came twenty-eight more representative peers. The same system of election as in Scotland was adopted and with the same result. There were, however, two main differences. These, unlike their Scotch brethren sit for life and an Irish peer who is not a representative may sit in the Commons for any constituency outside Ireland--Viscount Palmerston is one of the noted contributors of Ireland to British public life through this wise provision. This Act of Union added also four spiritual peers from the Irish Established Church.

At present the Upper House consists

of five classes of members.-

(a) Two Archbishops, the Bishops of London, Winchester and Durham and the Senior of the Bench of Bishops outside these.

(b) The hereditary peers of England, Great Britain and the United Kingdom.

(c) Sixteen representative peers of Scotland elected for each separate Parliament.

(d) Twenty-eight representative peers of Ireland elected for life.

(e) Four Lords of Appeal in Ordinary who also retain their seats for life.

The House, then as at present constituted contains some six-hundred members representing four distinct principles--hereditary, nomination, election and official position.

The change in the functional rights of this House have not been so peacefully brought

about as were the changes in its membership. The Commons, at first, a weak and timorous body soon began to assert its rights. In the original relations existing between the Houses the Commons were not entitled to have their petitions answered before granting subsidies and from this good old custom Henry IV said he would not depart. Later in his reign, however, when the Lords undertook to dictate the amount of the subsidies to be granted the Commons asserted themselves and refused to admit the right of the Lords to determine the amount. It was then decided that the two bodies should consult together and when they had agreed the matter should be reported to the King by the Speaker of the House of Commons. In 1861 the Commons objected to a Bill sent down from the Lords relative to the paving of streets in Westminster.

"It went " they said " to lay a charge on the people and that it was a privilege inherent in their House that such bills should first be considered there." The Lords contested this point and no legislation was effected. In 1671 the Commons resolved "that in all aids given to the King by the Commons the rate or tax ought not to be altered by the Lords". In 1678 this principle was further extendedthus. "All aids and supplies are the sole gift of the Commons; that all such bills should begin with the Commons; and no such Bills may be changed or altered in the House of Lords." Thus theoretically the Upper House has still the power to reject a money bill in toto but this power is now never exercised because such an action would be regarded by the Commons as an infringement of its privileges.

The most memorable conflict between the two houses took place in 1831--2 over the first Reform Bill. So far-reaching were the results of this struggle that the whole course of the later history of the House was undoubtedly altered. This conflict must be treated in some detail. The Bill was introduced by Lord John Russell in March 1831. It was an easy matter to expose the gross faults and injustices of the old system but not so easy to popularize the proposals of the new. Great difficulty was experienced in getting it through the Commons so the Bill was temporarily with-drawn and an appeal made to the people on this question. The new House had an immense majority favorable to the government whose chief slogan had been franchise reform. Russell again introduced a Bill similar in its terms to the one of the year be-

fore and it passed the Commons with a large majority in September 1831. It went to the House of Lords on the third of October and after a debate of five nights was thrown out by a majority of forty-one.

When this decision became known the greatest excitement prevailed throughout the country and riots were with difficulty kept down. The House met again in December, with prospects no brighter for the passing of the Bill than in October. The Cabinet now pressed the King for his consent to the appointment of a sufficient number of Whig peers to " swamp" the Tory majority in the House of Lords. William the fourth,however, was firm in his objection to such a permanent augmentation of the peerage, Lord Grey tendered the resignation of his ministry. The King after a day's consideration decided not to make

the fifty new creations required and accepted the resignations. Then, however, he came to look about for new advisors he found it impossible to induce anyone to undertake the task. The Tory lords understood how impossible it would be for them to accomplish anything in the present state of popular feeling. Wellington recognizing the inevitable advised the King to recall Grey. This the King did, granting the terms demanded by the ministry viz. that if necessary sufficient new peers would be appointed to insure the passing of the Bill. Then the Peers realizing that further opposition was useless gave way. The Duke of Wellington, followed by about one hundred peers abstained from voting and the Bill passed.

One of the remarkable facts in connection with this great struggle was that all

the peers created before 1791 with the exception of four, voted consistently for the Bill thus putting themselves in the fore-front of the great movement for reform, while the most strenuous opponents were the life peers or Bishops.

Since this great measure became law the position of the House of Lords has greatly altered. Sidney Low says "The House of Lords ever since the struggle over the great Reform Bill has been haunted by a suspicion that it exists on sufferance. It can seldom venture to assert itself and then only in a tentative and temporary fashion." It no longer claims an equal power with the House of Commons in legislation, it occupies a secondary position in the Constitution. Long before this, its power of interfering with monetary legislation had been given up

and from this time, the chief power vested in it, is its exercise of the suspensory veto, that is the power of delaying measures, as to the advisability of which the House may have reasonable doubts and which have never been shown to be the deliberate desire of the constituencies.

Since the struggles just described and the consequent loss of power of the Second Chamber but few changes have taken place in the relations between the two Houses. There have been, it is true, several sharp collisions and Radical declamations against the hereditary House have been frequent and often extreme, running the whole range from total abolition, to the very mild cure of the Select Committee--the infusion of some forty life members. But no important alterations have resulted from their efforts.

With this preliminary survey of the origin, growth and present position of the ancient aristocracy as a ruling force in the constitution, it might be well in the next place, to examine into the necessity for such a body of legislators.

The countries of the world have with great unanimity, decided that government by a one-chambered legislature is fraught with danger too serious to be risked for any length of time. The late Professor Lecky in his admirable work on "Democracy and Liberty" said, "Of all the forms of government that are possible among mankind I do not know any which is likely to be worse than the government of a single omnipotent democratic chamber. It is at least as susceptible as an individual despot to the temptations that grow out of the possession of

an uncontrolled power and it is likely to act with much less deliberation. The necessity of making a great decision seldom fails to weigh heavily on a single despot, but when the responsibility is divided among a large assembly it is greatly attenuated. Every considerable Assembly has at times something of the character of a mob. Men acting in crowds and in public and amid the passions of conflict and of debate are strangely different from what they are when considering a serious question in the calm seclusion of their cabinets. " Later he says " The necessity of a Second Chamber to exercise a controlling, modifying, retarding and steadying influence has acquired almost the position of an axiom."

That these observations of Professor Lecky are true is borne in upon us by the re-

sorts of the doings of popular houses all over the land. In few cases do the members bring to the consideration of a public measure a single mind. All are bound more or less rigidly by party ties. Many are bound by pledges to Constituents, many by personal interests or the interests of cliques who sent them up to the House. It is not too much to say that fully fifty per cent.of the contested measures are decided by the votes of those whose motives are wholly different from the ostensible ones and those which are paraded before an admiring electorate.

Walter Bagehot said, "With a perfect Lower House it is certain that an Upper House would be scarcely of any value. If we had an ideal House of Commons, perfectly representing the nation, always moderate, never passionate, abounding in men of leisure, never omitting the

slow and steady forms necessary for good consideration, it is certain we should not need a higher Chamber. But though, beside an ideal House of Commons the Lords will be unnecessary and therefore pernicious, beside an actual House a revising and leisured legislature is extremely useful if not quite necessary."

Recent years have shown that a great many of these essentials of the ideal House of Commons are wanting. The House at Westminster sits from six to eight months of the year. The volume of business coming before it is tremendous. Not five per cent. of the private legislation coming before it ever becomes law for the House has not the time to deal with it. In spite of the"closure" and the "guillotine", both of which are applied frequently, much of the business is left from year to year without having been touched. This is not surprising

then one considers the range of legislation to come before it. One day members discuss an Imperial Zollverein involving the trade relations of hundreds of millions of people, and the next discuss the calling out of the militia to avenge the murder of three policemen at Houndsditch.

In our Provincial Parliament the evil effects of hasty and ill-digested legislation are very apparent. In these the volume of business is small and the task of preparing all government measures at least, is submitted to the law officers of the crown, yet every session the legislation of the year before has to come back for amendment , in order to make its intent clear and in some cases, to make it workable at all. It is not surprising then, that in the Imperial Parliament, where the work is so great and the ministers so overwhelmed with re-

sponsibility, measures should slip through in an unprepared state. Allow these to pass the Commons with half their clauses undiscussed and it is not difficult to see the usefulness of a revising Second Chamber.

History gives some few instances of the efforts of nations to govern with single Chambers. In 1649 the Long Parliament abolished the Upper House as useless and dangerous. After a few years of the despotic rule of the one chambered legislature, even Cromwell decided to re-establish the "other House." In the United States, Franklin persuaded the thirteen original states to adopt this principle. The arrangement lasted from 1781 till 1787 and then it was decided that the Congress must include a powerful Second Chamber. The result was the American Senate, one of the most powerful of the

many styles of revising chambers. France has twice tried the single elective democratic chamber and on both occasions soon drifted into absolute government.

At the present time but three nations, Norway, Greece and Servia all comparatively unimportant, are ruled on this basis. In fact the Storthing when it meets elects from its own body a Second Chamber consisting of one-fourth of its members.

The main reason then for the continued existence of the House of Lords is the impossibility of vesting the supreme power of the sovereign Imperial Parliament in any single Chamber however perfect.

The function of the House of Lords according to the theorists is, "that it is a co-ordinate estate of the realm of equal rank with the House of Commons, that it is the aristocratic branch just as the Commons is the popular branch." We have already seen from our glimpse of the conflict between the two Houses that this is not true. Lord Iddesleigh once said," There is no doubt that the House of Lords would be intolerable if it ever undertook to exercise the functions which theoretically it possesses." Should the Upper House assume such power for a moment the result would be a deadlock between the two branches of the legislature and all legislation would be at an end. Since Bagehot wrote the above the following would appear to be the opinion of the book-makers as to the theoretical use of the Lords as a Second Chamber. It is a

conservative body which acts as a drag on hasty legislation and holds back until the nation shows clearly that it has made up its mind. It cannot upset the verdict but it may take care that the issue is properly placed before the court. It can ask that judgment be delayed until the national tribunal has carefully weighed the arguments. It may fairly say to the Commons " We do not think you were elected to do this-- Little or nothing was said of it in your election campaign--We will delay your Bill a year or if the feeling is still stronger until you place the issue fairly before the electorate".

That the Lords recognize this to be their function as an active part of the constitution is shown by a speech of Lord Derby on the Bill for the Repeal of the Corn Duties. " My Lords if I know anything of the constit

tational value of this House, it is to interpose salutary obstacles to rash and inconsiderate legislation; it is to protect the people from the consequences of their own imprudence. It never has been the course of this House to resist a continued or deliberately expressed public opinion. Your Lordships always have bowed and always will bow to the expression of such an opinion, but it is yours to check hasty legislation leading to irreparable evils." Since this speech, the doctrine here expressed has been generally accepted and never seriously questioned.

The usefulness of such a function will hardly be denied in view of what was said as to the over-worked condition of the Commons and the hasty, ill-digested legislation consequent thereto. McKechnie says, "The House

of Lords is the only barrier--a frail one may-
be--that offers resistance to the supremacy of
the Cabinet, unrestrained and uncontrolled."

Formerly it was claimed for the Lords
that as a body they could save the country from
the excesses of democratic violence. This is
no longer true for since their capitulation on
such important measures as the Reform Bill and
Corn Law no attempt will ever again be made by
a "reformed" or unreformed House to bridle the
Commons when that House fairly has its head.

IV.

Since the bicameral or dual chambered system is so general through-out the world it will be to our advantage to examine closely some examples of it and compare them with the House of Lords. For our present purpose, probably an examination of the American, French and Swiss systems, among foreign revisory houses, will suffice. While a glance at our own second Chamber at Ottawa may prove instructive.

The American Senate will be considered first, because it is the most conspicuous, success in second Chamber legislation in which the principle of heredity plays no part. In the Senate each state is represented by two mem-- bers. This equalizes the political importance of large and small states in this House at least. The Senators are named by the State legislatures and not by popular vote. They

hold office for six years in order to secure a permanent body of legislators. Change in the personnel of the Senate is effected by renewing one-third of its membership every two years. In this way a considerable measure of continuity is secured for the legislation and yet biennial change enables the House to keep in touch with popular opinion. The qualifications for the Senate are also somewhat higher than for the Lower House.

The whole body of the Senate is small as compared with many second chambers, being less than one hundred in all. Its deliberations are presided over by the Vice-President of the United States but he has no vote here except in case of a tie. As a legislative body it has co-ordinate powers with the House of Representatives except that it cannot or-

originate money bills. It may, however, both amend and reject them. In this respect it has much larger powers than the English Upper House. The Senate is not a supreme court of appeal but public men may be impeached before it as in England. The glory of the American Senate however, consists in the power vested in it for the management of foreign affairs. The framers of the Constitution evidently feared lest the popular House should lack that seriousness and sense of responsibility so essential to success in all diplomatic relations. No treaty can be contracted with any power and no ambassador or plenipotentiary of any kind to a foreign power can be appointed without the consent of the Senate.

One other source of strength to the

Senate is its power over the distribution of public patronage. Theoretically the Chief Executive of the nation makes public appointments but the consent of the Senate must be secured before any appointment can be ratified. In regard to these two powers of the Senate, viz. the control of foreign relations and of patronage, in Great Britain, they are quite safe in the hands of the King's responsible ministers and no change is desired. But the scheme of double and indirect election, which has always been supposed to be the greatest strength of the American system as it gives a representative character to the Senate while at the same time giving it freedom from popular control, is what appeals to one looking for suggestions for reform of the Second Chamber of Great Britain.

Of late, however, there have been persistent rumors that this much lauded system of election has broken down in too places. The legislatures have no liberty of choice, all being pledged to vote for a specific representative for the Senate before they appeal to the people for their own election. And again, the elections themselves give opportunity for every sort of corrupt practice as investigation into the case of Senator Lorimer revealed. The following editorial clipped from a daily paper recently, gives a fair idea of the popular feeling with regard to this corruption; "For the first time in history a committee of Congress has reported in favor of having senators elected directly by the people instead of being appointed by the state legislatures. The history of the appointment of senators has been

associated with the grossest irregularities. It gives the widest scope for boss rule and for more direct dishonesty, as was seen in connection with Lorimer of the Illinois legislature.

This is another indication of the movement in politics to have important matters referred directly to the people who will act as judges. The mass of the people are honest at heart and though the majority may be mistaken for the time being, still it is right in the long run. The heart of the people is sound. The movement of referring all important matters directly to the people will not end until the referendum has come."

In the face of the fact that this strong feature of the American system which has been the admiration of many political wri-

...ers , needs ~~of~~ reform, there does not appear to be much encouragement here for those who advocate retaining the House of Lords, but putting it on an elective basis.

The Senate of the French Republic consisted, originally, of two classes, a certain number of life peers and a further number elected for a period of nine years by the departments and the colonies. Recently the Senate has decided that all its members shall be elective, so that it will now be merely a second popular House in which the members hold seats for a longer time.

It is the aim of everybody of constitution makers to devise a popular House which will be as perfectly representative a body as possible. Any departure from this

basis of representation must mean that the second Chamber is less representative than the former and so entitled to have less power conferred upon it.

This Senate is one of the most powerful Second Chambers in the world for it not only has all the legislative powers of the Chamber of Deputies with the exception of the origination of money bills, but it has this special prerogative -the President cannot dissolve the Lower House without its consent. With this power it can delay and block all legislation for an indefinite length of time.

Switzerland is the home of the referendum and this fact entitles it to our consideration Its system of government consists in two chambers, co-ordinate in character and similar in

election to the American. When a measure of first rate importance has passed both Houses it must then be referred to the electorate for a direct decision. Other bills less important may be referred if demanded by the written petition of a certain specified number of voters.

In Canada the popular Chamber is called the House of Commons and is elected on a strictly representative basis, the population of Quebec after each decennial census forming the standard of distribution. The Upper House called the Senate, contains about one-~~fifth~~ third the number of members to be found in the Commons. Senators are appointed by the Governor in Council and hold office for life. Theoretically only men who have attained distinction in the professions, in politics or business may receive appointment. Practically the only qualification

required is distinguished party service and wealth. As a result of this practice in appointment, no one ever finds his way to the Senate (during the reign of either party) unless he favours the party in power. Occasionally after a long period of power on the part of one party or the other, the Senate continues for a short time to be opposed to the new government. Senators quite quiescent before, then begin to bestir themselves and strive to embarrass the government in every possible way. At such times cries for Senate reform are quite as loud as those for reform of the Lords at present. Shortly, however the balance of power shifts to the other side of the House and the agitation ceases. In no sense is the Canadian Senate an impartial revising Chamber and it will never be so until some other means is found of rewarding worn-out politicians.

These four may be fairly considered as among the most successful of the bicameral forms of government. They have been chosen for comparison here because they illustrate some of the schemes being advocated by many would-be-reformers of the House of Lords. From these descriptions of foreign Upper Chambers it will be seen that all enjoy much more favored positions than the Lords and English reformers will find little to suit their purpose. On every hand the cry is to limit, not add to, the power of the hereditary House. The powers of the Lords have been already so shorn away that there is little left to limit which makes all schemes of reform very difficult. It recalls Mr. Sidney Lows' famous phrase " The strength of the House of Lords is in its weakness."

T.

Theoretically then the House of Lords is a sort of drag to prevent the Commons from running wild. It will now be necessary to investigate the actual working out of this theory as exhibited in the practical field of politics. First we shall consider the case for the Lords. No one will deny that the House of Lords has the influence which belongs to wealth, to high rank and ancient lineage, to landed property, to ideas and sentiments which have been interwoven into the texture of English society and to traditions and usages and habits of mind which are the growth of ages.

Walter Bagehot enumerates three distinct uses which the Lords serve in their dignified capacity as an integral part of the British Constitution. First, they tend to

promote a reverence for the crown and nobility generally. Since all are hero worshippers of some sort, it is of advantage to have the popular mind directed to something so honorable and with so glorious a past as the aristocracy of England. Second, the order of nobility perverts the worship of wealth. Professor Lecky once said--"When the worship of rank and the worship of wealth are in competition it may at least be said that the existence of the two idols diminishes by dividing the force of each superstition, and that the latter evil is an increasing one, while the former is never again likely to be a danger." It is well known that in other lands the millionaire is well- igh supreme. The aristocracy saves us from this. A man cannot reach the summit of social fame in England simply because he was a millionaire packer in Chicago. In the third place it pre-

serves the people from greed of office for the sake of the standing it gives. Here is a fully developed and well organized society which does not need additions. The chance of office under government carries with it no corresponding social advantage.

Then the peers have special education for politics. It is nonsense to suppose that because a peer happened to be a statesman of high order that his son and son's son would always be so, but it is fair to assume that the great families of England thrown into public life from early ages, with the advantages of ancestors illustrious in the crisis of English History, with legitimate ambitions and leisure to devote to the study of politics, should produce the master minds of the world in the field of practical politics. The qualities required

for successful political life are not brilliancy of intellect and profound scholarship but rather good judgment, industry, tact and knowledge of men and affairs. These the peers are in the best position to acquire.

The young man fortunate enough to belong to one of the great families, has the advantage of the best education the country affords, travels and thus meets men of all classes and shades of opinion, associates on easy terms with the greatest men in the land and lives fro his youth in an atmosphere distinctly political. Thus everything tends to direct his attention and tastes toward a life of usefulness in his capacity of hereditary legislator.

The Lords as a class possess a high degree of ability. Observers have again and again noted the large amount of curious special

knowledge possessed by members of the Upper House. No matter what subject is started for discussion there is some obscure peer on the back seat who has made the subject a study and knows all about it. But it is rather in the field of administration that the superior qualities of the class have been displayed.

The House of Lords is somewhat representative in its character. Though there is of course a great preponderance of the hereditary element, in these days in addition to the Bishops who hold their seats by virtue of the See or through seniority, and the elected peers of Scotland and Ireland, there is being continually introduced into the Upper House distinguished lawyers, poets and surgeons, great merchants and landlords and famous soldiers, sailors and administrators. It is quite

possible that government has not been sufficiently ready to recognise achievement in all the fields of human progress with honours which would entitle to a seat in the gilded chamber, but the blame for this must rest on the King and his Ministers not on the Lords. This House at least is free from the stricture De Tocqueville is said to have passed on the American Senate. "You are struck" he said "by the vulgar aspect of this great Assembly. The eye looks often in vain for a celebrated man."

Moreover this House is not the arbitrary archaic institution it is often represented as being. More than one-third of the present members have had seats in their younger days in the Popular House. To-day every electioneering agent regards the son of a great peer as the most popular candidate he can secure. It is probably

true that no prime minister from either party would undertake for a moment to form a Cabinet without drawing largely from the hereditary aristocracy. So long as this continues the Lords will represent a real and living force in the nation.

In spite of all that has been urged in behalf of the House of Lords there is another and very important side to the question. Much that is reasonable can be urged against them both as hereditary legislators and as a revising chamber. Benjamin Franklin once said that there was no more reason in hereditary legislators than there would be in hereditary professors of mathematics. Radical orators since 1832 have had this principle of hereditary as an unfailing subject for attack and the phrase to " end or mend " the House of Lords has become hackneyed. John

Morley says " A hereditary legislature in a community that has reached a self governing stage is an anachronism that makes the easiest of all marks for mockery and attack so long as it lasts." It is the last hereditary chamber left in Europe and has probably survived the storm so long because its powers are so small. It represents what all democrats hate, the survival of a privileged order in an age when all privilege is condemned.

A great number of the peers eligible to sit in the Upper House are unfitted by tastes, interests and habits for legislation of any kind. The very wealth and leisure which may in the hands of some be of the greatest advantage as equipment for service, may and often does in the case of others provide the opportunity for vulgar ostentation, careless habits, vicious living

and worse. To Nonconformists and Dissenters generally it seems intolerable that such men should have it in their power to prevent their receiving ordinary justice in the matter of Education and Religion.

Probably the most caustic critic of the hereditary element in the Lords is Mr. David Lloyd-George. He is an extreme Radical who would abolish the privilege in legislation in toto, and has the faculty in his criticism of stirring up the ire of that usually apathetic body. The Lords do not object to his saying that the rise of many of their noble families is due to the spoliation and annexation of the monasteries in the reign of Henry VIII but they do resent it when he says that they are in the House of Lords because their grandfathers robbed the poor box.

It is obvious then that any scheme looking towards reform must include as its cardinal principle if not the rejection of the hereditary right at least the generous curtailment of the right.

The next count in the case against the Lords is their obvious lack of interest in the work which they are expected to perform and to which they are supposed to cling with great tenacity. Some one has said "To become a convert to the cause of reform one has only to look at the Lords at work." Except on great occasions the attendance in the House is very small; on an average not more than a fifth of its members ever put in an appearance and frequently most important decisions are taken with a bare quorum present. Many men such as Mr. Gladstone who have been used to the strenuous life of the

Scottish and Irish peers who have been incapacitated from sitting in the Lower House through succeeding to an hereditary seat, have refused to go to the Upper House where such lack of attention and indifference is manifest. The late Goldwin Smith once said " There is no use in blinking the fact that its record will not bear scrutiny. When the House does rouse itself from its customary stupor it does so not only to oppose all political change as in the case of the Reform Bills but such changes as the Habeas Corpus Act, the humane improvement of the criminal law and the emancipation of the press."

The wisest among their own leaders have always been lecturing their fellow peers on this very subject; but in vain. Till comparatively recently but three members were required to form a quorum. In those days the

whole House frequently would not have provided a sufficient number for a dinner-party. To-day unless thirty members are present, when a division is to be taken, the business in hand stands adjourned. This lack of interest was accompanied by the old custom of voting by proxy. Many members of the House who had neither taste nor competence for legislation and were habitual non--attendants, with great regularity sent their proxies on all contested measures. This practice has been completely abandoned.

Many of the leaders of the House regarded this political languor as very desirable. As soon as the peers become animated and interest on any matter, the Radicals immediately become revolutionary and demand the immediate suppression of the Chamber. Men of spirit will not risk frequent collisions with the popular House

when they know their position is subordinate and they must be continually taunted with their privilege.

One of the most serious evils in the House of Lords is its political bias. Mr. Lowell in his Government of England " says that there is no objection to the Lords being conservative until they spell the word with a capital C. Since the coming to power in the Commons of the great body of middle class men, after the extension of the franchise in 1872, the Lords have been found more and more closely allied with the Conservative party. If they venture to oppose Tory legislation at all it is only when they are more conservative than the Tories themselves. From 1895 till 1905 they never rejected a measure sent up to them because forsooth they were sent up by a Ch- -

ional Government though Mr. Balfour's was admitted by one of the weakest ministries England has had in years. But in 1905 when Sir Henry Campbell-Bannerman took office the keenest activity was manifested forthwith. The Education Bill was mangled beyond all recognition--the Licensing Bill was rejected--the plural voting bill met the same fate and finally the Budget of 1909 experienced in no uncertain manner the effects of their rejuvenation.

Morley quotes a speech of Gladstone in 1884 when contesting the country on the franchise bill of that year. "We have had twelve parliaments since the Reform Act. Ten of these parliaments have had a Liberal majority. The eleventh was elected Tory but afterwards turned out the ministry of Sir Robert Peel and thereafter supported Lord John Rus-

sell and a Liberal government. The twelfth was a thoroughly Tory parliament. Well, here are ten parliaments on the one side: here is one parliament on the other side. The House of Lords was in sympathy with the one parliament and was in opposition to the ten parliaments. And yet you are told, when we will say for forty-five years out of fifty, practically the nation has manifested its Liberal tendencies by the election of Liberal parliaments and once only chanced to elect a thoroly Tory parliament--you are told that this body represents the solid and permanent opinion of the country."

After the failure of the Gladstone government to secure a majority for its Home Rule Bill and the Lords had compelled a dissolution it was freely claimed by apologists for this

House that it had acquired in itself a sort of referendum function on questions of exceptional moment. Then, however Mr. Balfour's government was thoroughly discredited in 1905 and by-elections everywhere were going against the ministry, no members of the House of Lords thought for a moment of exercising its new referendum feature. Granting that some such function as the compelling of an appeal to the electorate on very contentious measures does exist, it surely must be maddening to have it only exercised in behalf of its friends. Chamberlain once said "the Dissenters have a long score to settle with the House of Lords" and it would appear that that of the Radicals is scarcely less so.

Under such circumstances their usefulness as a checking and revising instrument disappears. They refrain from taking any action

When the Conservatives are in power lest they should give an advantage to their rivals whom the majority of the peers dislike and distrust. On such occasions resentment is roused to the highest pitch as at the present time and reform or re-construction again becomes the paramount issue.

In his book "Fourteen Years in Parliament" A. T. Griffith-Boscawen a Conservative and High Churchman, speaking of the Licensing Bill, has this to say with reference to this fact of common observation. "After this, the Bill went through and meeting no serious opposition in the Lords--who were always unwisely inactive during the long reign of the Unionist government, became law?" This from a Tory and an avowed friend of the Upper House is significant. The House of Lords is

without doubt a drag on the wheels of the popular coach but it is not attached every time the steeds grow restive but rather according to the driver in charge. During the last election campaign it was shown that since 1868 the Lords had delayed or rejected eighteen Liberal bills and had interferred with but one Tory measure and that only because the government had failed to explain the measure to the leaders in the Lords beforehand.

The Upper House is composed very largely of men whose wealth consists in great holdings of land. Very much of the legislation coming before this chamber has to do with matters directly affecting their interests. It is hardly probable that six hundred men could be found so patriotic and disinterested as to divorce their own considerations from their votes.

any body of men which is likely to decide important measures according to its own interests rather than from the national standpoint is manifestly unfit to act as a revising board and should not be entrusted with such power.

Perhaps no policy of the Lords has aroused so much deep seated disgust as their attitude on all religious questions. In all cases the removal of religious disabilities has been slow enough but of late at least, the Lords may be regarded as the bulwark of all that is reactionary. The doctrine that the existence of an Established Church implied that state funds should be devoted to one form of religion only, and that the great fields of state power, education, influence and employment should be guarded by religious tests still finds its support in the hereditary chamber.

VI.

Before proceeding to a discussion of the great question of the reform of this second chamber it will be well to sum up briefly the actual powers now possessed and exercised by the House of Lords. First, it has no power to reject, amend or change in any particular any financial measure of the government. Second, on all measures of national importance which have been endorsed by the people as a whole and which command large support in the Commons it will rarely if ever exercise its veto. Third, in the case of measures about which there is reasonable doubt as to the mandate from the people, it may amend, delay or reject them until the people have given their verdict. Then the Bills come back again with the endorsation of the nation they must pass. The exercise of this power sometimes enables the Lords to bring about a dissolution though ministers more often allow

these isolated instances to "fill up the cup" of wrath against the time of ultimate appeal. Fourth, they have the power of originating all kinds of private legislation and having less work before them are able to give excellent service in this field. Unfortunately but few of the bills so started get through the Commons.

In this connection Lowell says, "While, therefore the House of Lords occupies a subordinate place in regard to public measures of all kinds and a position of marked inferiority in the case of government bills, in private and local legislation, which in England is of great importance, its activity is constant and highly useful." These are the fragments actually remaining of the once great powers of the Curia Regis.

VII.

Any scheme for the reform of the Upper House which may be advocated must bring about one of three results.

(a) The reform may be undertaken with a view to strengthening the House as a body and making it a really influential chamber such as the American Senate or the French Upper Chamber.

(b) A reform may be attempted which will leave it the retarding and revising powers but remove the objectional features of hereditary legislation and political partizanship.

(c) The powers of the Upper Chamber may be so curtailed that the House will be reformed out of existence as an active factor in legislation.

Without doubt this would be the result should

the proposed legislation of the present government become law. An Upper Chamber with no power of rejecting or restricting the legislation sent to it would be an anomaly and no self-respecting man would consent to remain a member of such a body.

Reformers at the very outset are opposed by this fundamental provision of the constitution, that all legislation to become law must receive the assent of both Houses of Parliament. They say it is unreasonable to expect that the peers will vote voluntarily to exclude themselves from all active participation in the public affairs of the nation. They recognize also that to attempt to bring about the abolition of the Upper House without its own consent would probably mean revolution. Past history however, would seem to justify

the opinion that should the most radical proposal secure the support of the popular House and the endorsation of the electorate, the peers would probably bow to this last aggrandisement of power on the part of the people, in the same manner that they have watched their other powers slip away from them. Unless, however, the feeling of the people was expressed in no uncertain terms the peers would be justified in resisting any further diminution of their powers in view of their past glory and their willingness to be relegated to a second and subordinate place.

If on the other hand any attempt were made to add to its self-confidence or give it real authority it could not be tolerated in its present form. Lord Iddesleigh force observed of the two Houses constituted

as they are at present-"The House of Commons represents Everybody while the House of Lords represents Nobody. Everybody and Nobody must of necessity find it hard to quarrel. But if the Lords were so reorganized as to represent Somebody, the case would be altogether different. Everybody could quarrel with Somebody easily enough."

Organic changes in the Lords and various attempts at Reform have been either carried through or suggested for the past two hundred years. In 1711 when the Whig parliament, which had prosecuted the war of the Spanish Succession with such vigor lost the confidence of the people, a Tory government under Harley took control with a considerable majority in the House of Commons but a slight minority in the House of Lords. The credit of the peers stood high and though the ministers had the support of a strong popular House they thought it impossible to defy them. Finally Harley persuaded the queen to create twelve new Tory peers and thus to swamp the hostile majority in the Lords. This action had a wide constitutional significance. In 1688 it had been demonstrated that if the King and Parliament pulled in opposite direc-

tions it was for the King to give way; this creation of peers now made it evident that if a conflict arose between the two houses it was for the Lords to give way.

This action of the Tories was directly responsible for the peerage bill introduced by the Whig statesmen Sunderland and Stanhope in George First's reign. According to this bill the King was to be allowed to create only six additional peerages after which he could only make a new peer on the extinction of an old peerage. This measure, introduced in the Lords, passed that House, but failed in the Commons owing to the opposition of Walpole and the unwillingness of the members to forego the possibility of securing titles. The idea of the Whigs was to make impossible such a "swamping" as had taken place in Anne's reign. It.

was fortunate that this did not become law for such a House of Lords would have been a narrow oligarchy capable of setting at defiance both Crown and Commons. If this attempt had succeeded, we should have had instead of a peerage by nobility--a narrow and rigidly defined privileged caste.

The Crown has never "swamped" the Upper House by the wholesale creation of peers but the knowledge that it could do so has had on more than one occasion a most salutary effect, both in the House and on the nation at large. In 1832 when there was danger that the Reform Bill would be rejected a second time, King William agreed to the issue of some forty or more new patents. The Lords rather than have their order thus invaded somewhat indecorously gave way. It is proposed to-day that the King

should adopt the same method to force through some scheme for the reform of the Upper House should the members of that chamber prove refractory. Such wholesale creation of peers would mean as Mr. Sidney Low says, "The bringing out of viscountes in platoons and barons in battalions." Such a proceeding would make all connected with it a laughing-stock.

Some fifty years ago the Crown attempted to introduce into the House of Lords Sir James Parke, an eminent jurist, as Lord Wensleydale by letters patent which limited his peerage to the length of his life. The Lords immediately raised the objection that the Crown had no power to grant the right to sit and vote in parliament to a life peer. The committee on privileges to which the matter was referred, reported that the Crown un-

doubtedly had the right to confer such a privilege but that the prerogative had not been exercised for above four hundred years and that it would be a dangerous precedent if this were allowed to stand. The ministry admitted the objection and Lord Wensleydale took his place as an hereditary peer. The question was not raised again until 1869 when Lord John Russell introduced a Life Peerage Bill which declared that it was "expedient that peers created for life should in limited numbers and under certain conditions be entitled to sit and vote in the House of Lords." There were so many amendments suggested and such a difference of opinion as to the numbers to be admitted and the qualifications to be demanded that the bill was ultimately dropped.

Attempts have been made at different

times to exclude the bishops from the hereditary chamber. In 1870 leave was asked in the Commons to introduce a bill which should relieve all bishops, to be consecrated in the future from service in a legislative capacity. Thus it was proposed to remove the Lords Spiritual by degrees. Leave, however, was refused.

The Lords of Appeal in Ordinary were appointed by act of parliament in 1876. There were five judges who took rank as Barons and were entitled to sit and vote in the House of Lords during their tenure of office. Thus the refusal of the right to appoint for life was again reasserted but the right of an office to entitle a layman to membership was admitted. Ten years later the privilege of membership for life was conceded.

Lord Rosebery in 1884 moved for a "Select Committee to consider the best means of promoting the efficiency of this House" The question was debated at some length but in the end the committee was refused.

In 1888 a remarkable scheme was introduced by Lord Dunraven for the reform of the Upper House. The rights and privileges of existing Lords of parliament whether Spiritual or Temporal were not to be affected but in other respects the House was to be completely remodelled. The temporal peers were to be represented by one hundred and eighty of their own number elected by themselves. There were to be peers for life, not to exceed five in number--ten either for life or for a limited time, to represent the colonies. Two to represent the interests of the Roman Catholics, two to represent Protestant Dissenters and

, two to represent the interests of science, letters and sound learning generally. EveryCounty Council was to have the power of recommending one person to the Sovereign to be a Lord of parliament. All Lords of parliament whether elected by the temporal peers or appointed on nomination by the Councils, were to hold office for nine years only. The establishment was to be represented by the incumbents of the Sees of Canterbury, York, London, Durham and Winchester. This scheme found little favor in the House of Lords and was dropped.

The same year Lord Salisbury brought forward a much simpler scheme. The Crown was to have power to appoint persons with certain qualifications to be peers of parliament for life. The total number of such peers in existence at any one time was not to exceed fifty. No one was to be appointed unless he had

, been a judge of a Superior Court in the United Kingdom for at least two years: had attained the rank of Rear-Admiral in the Navy or of Mayor-General in the Army; had been Ambassador Extraordinary and Minister Plenipotentiary : had become a Privy Councillor and been employed in civil service of the Crown or had been not less than five years Governor-general or governor in a colony, or Lieut-Governor in India. Not more than three persons so qualified were to be appointed in any one year. This bill passed its second reading in the Upper House but was advanced no further.

Thus although various propositions have been suggested both by the peers themselves and others, there have been no changes of a vital character in the principles of the composition of the House of Lords with the single exception of the introduction of the

Lords of Appeal in Ordinary. The House to-day is made up of the same five classes, given above, in connection with the historical sketch of the Lords as a body.

IX.

Various propositions, looking towards reform of a more or less radical character are prominently before the nation to-day and no discussion of this subject could be complete without some consideration of those which may be regarded as the most advanced views. As has already been suggested, all classes of reformers range themselves in one of three groups (a) those who would still further reduce the slender powers remaining to the House of Lords. All those who would abolish the second chamber entirely are to be found here as well as those who would preserve the House but take away its power of veto. A third group of whom the late Professor Lecky was one would lessen the power of the Lords by clearly defining and limiting its power of veto-- He said "A veto limited and defined by law would

be more fearlessly exercised and more generally accepted." Objections to the first of these "reforms," have already been noted. The second proposal would be to render the Upper Chamber an inoperative and ornamental part of the constitution. The difficulty in restricting the veto right is to decide upon some basis of restriction not purely arbitrary. To suggest that the Lords do not block any measure beyond the second parliament is to leave things as they are, for the Upper House now never ventures to oppose a measure that has received popular sanction subsequent to their first delaying it. On the other hand to suggest that no measure be delayed beyond the second session if the same parliament is to say that the revising chamber can do nothing save delay Liberal measures one year while the Conservatives pass theirs in one session.

Other reformers would select certain bills and allow them to be rejected only by an overwhelming majority of the Upper House and certain of these must not be delayed if the Commons pass them by a two-thirds vote. The objection to all these schemes is that they are based on artificialities and arbitrary action. A government with a small majority would be badly handicapped under such an arrangement. If it is now almost impossible to get a Tory bill thrown out by a simple majority only, in the halcyon days of a two-thirds majority the task would be an absolute impossibility.

In this connection should be described a proposal adopted more or less tentatively in the campaign of 1910 by the Conservatives--the Referendum. The working of this

arrangement in the Irish Constitution has been outlined above. Because of its popularity with the masses and its seeming reasonableness it demands more than passing notice. All those who cry earnestly and loudly for the National Tribunal as the court of last appeal accept the Referendum as the panacea of all State ills even that of a recalcitrant House of Lords. In its commonly accepted significance the Referendum may be defined as a requirement that all first-class bills after passing the legislature must be "referred" to those who possess the ordinary parliamentary franchise. Certain other second class bills of a less contentious character may be referred on the petition of a specific number of voters.

Professor Dicey enumerates four advantages which he thinks would accrue from its

introduction into England.

(1) By this direct reference the Constitution would be protected from a hostile Parliamentary majority in the Lower Chamber.

(2) The putting of one question would secure for each bill a decision on its merits, which would do away with the constant efforts of hostile parties to befog the electorate by confusing the issues.

(3) Equal rights in the decision would be given to all voters whereas the minority under our present system cannot make its opinion and influence felt.

(4) It would enable voters to take a broad view of public questions quite aside from party prejudices and the wishes of their leaders.

Most people will agree that Professor Dicey is either an incurable optimist or hold some sort of brief for the Referendum. The theory of the Referendum so far as the English situation is concerned is exceedingly simple. The Commons we will say pass an Education Bill--- The Bishops and High Churchmen among the Lords mutilate it beyond all recognition. Each claims to represent what the people want or what they will want when they think it over. With the Referendum the matter is easily settled. Give the people a chance to say which House is correct. A plain vote "Yes" or "No" and all is over with the counting of the ballots.

When any admittedly vexed and hotly disputed question can be settled so easily it is always well to investigate somewhat more deeply. Our experience with referred money and other by-laws in the West leads us

to infer two or three unfavorable features heretofore overlooked.

(a) The apathy of the average voter when the question is one in which he is not directly interested or which he does not properly understand.

(b) The absolute inability of the average voter to understand the smallest part of what is involved in ninety-nine per cent of the legislation on which he should have to vote, shrouded as it would be in the legal phraseology of the statutes. The issues involved would be so many and so hoplessly far-reaching that he would, if genuinely interested recognize his inability to decide the question on its merits and either vote at the dictates of his party chiefs or abstain altogether from the expression

of his opinion.

(c) There would be little or no popular discussion. Men capable of discussing and explaining the measures would not take the time and pains to instruct the electorate--an almost endless task.

(d) As a result of all this there must inevitably come to the legislators themselves a sense of their own impotence. After the most perfect bill has been prepared, critized and defended, its final acceptance does not rest with a body of reasonably intelligent men chosen to consider just such matters and bound by their oaths to give their best service to the country, but with Tom, Dick, and Harry, scattered everywhere throughout the country, who will neither look into the merits of the bill nor recognize them

if they do. This lowering of the legislative responsibility and the opportunity of bribing whole constituencies by the "interests" must always be a heavy weight on the progress of the Referendum into popular favor.

But this is not all. In how many cases does an opposing party in a legislature say--"We oppose this flatly" and propose nothing in return? We should have referred to us and not an Education bill to accept or leave alone but rather two bills embodying the views of the two parties as to the kind of bill best suited to our needs. Again the distinctions between the two proposals will be so be-clouded as to render a correct judgment by the "man in the street" a practical impossibility.

The Commons might adopt the Refer-

endum only when a deadlock occurred with the House of Lords and their having framed a bill say to the people "here is a bill as we have prepared it--Take this or none. Even if you object to itsevery slightest detail but approve the general principle you must vote for it or get nothing. In most cases the people would accept the legislation rather than get nothing and so reduce the British Parliament to the status of a sovereign one chambered legislature. In view of these and other objections which might be raised such as the frequency of popular votes, the Referendum does not appear to be the general heal-all which its advocates claim it to be.

The second great group of reformers is made up of those who would leave the powers of the House untouched but alter its

composition. The more violent of these would sweep away the hereditary principle entirely and build a new institution on the principle of popular election or on that of ministerial nomination or a combination of the two. The most fundamental objection to this proposition is that anybody of men so elected will at once claim co-ordinate powers with the Lower House These men represent somebody and have as direct a mandate for the enforcement of their opinions as have the members of the other branch. It is difficult to see how such a Chamber could avoid arrogating to itself some such powers as those possessed by the American and French Senate or the Belgian Upper House.

No one who is at all familiar with the system of Senatorial appointments in vogue in the Dominion would regard a similar institution at St. Stephen's as in any sense an im-

provement on the House of Lords as at present constituted. Under the appointing system the Cabinet of the day nominates only its own supporters and frequently men whose only claim to the honor is exceeding activity as party hacks or ability and willingness to contribute largely to the sinews of war for the maintenance and perfecting of party organization.

In this style of chamber the Crown's ancient right of appointing peers to give the popular party a majority in the Upper House would be sacrificed to the Ministry which could then sway both Houses of Parliament and the King as well. Then there would be all the system "of checks and balances", " regulators and safety-valves" which have been the delight of all writers on political science since the days of Bagehot?

In this group should also be classed all those who would employ in their schemes of reform such principles as nomination of life peers, delegation of certain members by the peerage as a whole, qualification of office, and election by certain independent bodies such as County Councils. The principles here involved are self explanatory and demand no more that a word in passing. Since many peers are unfitted by taste and ability to act in a legislative capacity they could without hardship be deprived of that part of their hereditary right which entitled them to sit and vote in parliament. They could be required to choose from among their number, from one hundred and fifty to two hundred representative peers who would accept election and assume the responsibility of revising legislators. This would include all who ha-

·bitually take part in the work of the House as at present constituted and at the same time retain some portion of the hereditary element which by some is regarded as essential in any reformed House.

Lecky voices his opinion on this point thus-- "For my part, I should consider it a misfortune of the hereditary element, of which it is now mainly composed, were not still largely represented in it. The peerage occupies a vast place in English history and tradition. It has a wide-spread influence and an indisputable popularity; and its members possess in a high degree some of the qualities and capacities that are most useful in the government of men. Their political prominence not only represents, but also sustains and strengthens, a connection between the upper

classes of the country and political life, to which England owes very much, and in an age as democratic as our own it may qualify some evils and can produce no danger" This system of delegation commends itself also to such distinguished constitutional writers as Mr. A. Lawrence Lowell and Mr. Sidney Low.

The introduction of new members as life peers on the nomination of the Ministry subject to certain restrictions would have one important advantage, Undesirables whom the party must honor but who would be manifestly unfit as legislators could be given hereditary titles in the peerage without seats in the Lords. Excellent men with less money but more ability could be made Lords of Parliament for their life time, greatly to the advantage of the State and without increasing

the hereditary element in the House. In cases of signal services the individual might have his title made hereditary and his right as a legislator co-terminous with his own life.

There seems to be very grave objection to the plan of having officers qualify a man for a seat in the House of Lords. This scheme would lack flexibility and might result in the promotion of undesirable persons who were ambitious for recognition in the Upper House. At any rate this system would be devoid of all flexibility. The further proposition that such bodies as County Councils or local legislatures--should such be established--should send representatives to the House of Lords savours too much of the American system of secondary and indirect election which is even now fighting for its life against direct election.

These then in brief are the general principles by which the would-be reformers of the House of Lords propose to be governed. It only remains for us to examine two con-

crete examples which among moderate reformers have received the most general support. Those are the schemes drafted by the Select Committee of the Earl of Cawdor, presided over by Lord Rosebery, which submitted its report two years ago, and an alternative scheme growing out of that report, first suggested by Professor McKechnie of Glasgow University.

The Select Committee before proceeding to its task adopted three basal principles by which it was to be guided in its findings. These were;-

(1) That the mere fact of birth, taken by itself ought not to secure admission to the Upper House.

(2) That "qualification" by official experience should be the main test for admission to the reformed House of Lords.

(7) That all reform should be frankly based on grounds of utility without undue deference to the views of experts on the law and history of the Constitution on the one hand, or to the analogies of foreign Senates and Second Chambers on the other.

As general principles of procedure these axioms will commend themselves to most who desire the reformation of the House but not its destruction. Between the guiding principles and the actual proposition submitted there is a wide divergence.

The scheme outlined by the Committee may be described briefly as follows:-

(1) No one except princes of the blood royal shall have the right to a place in the House of Lords merely because of birth.

(2) The possession of certain "qualifications" by hereditary peers such as having been a Cabinet Minister, Viceroy of India etc., would entitle the holder to sit and vote. The Committee estimated the number of peers so qualified at the present time to be one hundred and thirty. So far then our reformed House consists of one hundred and thirty-three peers qualified by blood and office.

(3) The third division is the remarkable feature of the Report, in view of the principles the Committee professed to hold. Out of the remainder of the hereditary peerage two hundred were to be elected for each new parliament by their brother peers. This brings the number of hereditary peers elected and "qualified" up to the very respectable number, three hundred and thirty-three.

(4) The Crown might create a very small number of life peers according to strict limitations. These non-hereditary legislators must never exceed forty at any one time; and not more than four were to be created in any one year. It is not remarkable that the sincerest well-wishes of the House despaired, on the publication of this report, of any effective "reform" ever emanating from the House itself.

(5) The Spiritual lords at present numbering twenty-six were to be reduced to ten. The suggestion was made that prominent Dissenters and Roman Catholics might be included but no provision was made for its being done.

(6) Two or three colonial representatives might, with the approval of the governments of the countries concerned, be added.

(7) The Lords of Appeal in Ordinary were to retain their seats as at present. Such in outline was the best the Select Committee of the Lords could do towards reforming its own House. It is difficult to see how the Committee reconciled its suggestions with its professions at starting out. The new House would consist of something less than four hundred members. Three hundred and thirty-three of whom would represent the hereditary element simply--To balance these in influence and voting strength would be forty life peers, ten spiritual peers and four law lords with perhaps a dozen others drawn from various sources.

The scheme is open to several objections other than those noted in connection with each division of the Report. No attempt

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was made to deal with the one-sidedness of the House as at present constituted and which would be perpetuated in the next House should this scheme be adopted. Nothing was done either for the introduction of those varied aspects of national life which all are agreed should receive some further recognition in the Upper Chamber. This scheme was felt to be entirely inadequate by both friends and enemies of the House of Lords.

Taking the outline given by the Committee in its report Professor McKechnie suggests that the scheme may be made workable through the introduction of these changes,

(1) The number of hereditary peers to retain seats in the "reformed" House may be placed at approximately two hundred. The peerage itself may well be trusted to select the best men from its own number.

This choice, in order that a solid Tory phalanx may not be returned, should be made by cumulative vote from the whole peerage of the United Kingdom. Mr. Lowell claims that not even this will prevent it, but there seems reason to believe that with each peer having two hundred votes to distribute, the men best qualified through experience as legislators in the Commons or in diplomatic and departmental work would be chosen. It would seem only a fair return for the loss of their hereditary seats, to allow the peers a free hand in choosing their representatives and to remove from those not chosen their present disabilities as regards seats in the Commons.

(5) It seems generally agreed that the Second Chamber in Great Britain should number from three hundred and fifty to four hundred and

fifty members. This leaves an excellent margin for the introduction of new blood which must of course be the purpose in creating life peers. It would seem that to make reform effective a number of life peers equal to that of the elected hereditary peers must be appointed. This must be done gradually unless the ancient House is to be "swamped" more effectually than ever attempted before. The selection of these life peers would have to be left pretty generally to the discretion of the King and his responsible Ministers. To attempt to specify who should be eligible and who passed over would bring the whole scheme into disrepute. With the safety-valve mentioned above of conferring hereditary peerages without legislative rights on insistent party favorites the ministry would be left a

free hand. Probably it would be unwise to appoint more than ten of these life peers during each year. Though this would involve a lapse of twenty years before the House attained its normal strength such a situation would not be more anomalous than that of the present, when it is increasing in size so rapidly.

(7) So far no scheme has been advanced for the inclusion of representatives of the Church, the colonies, or the learned societies. As for the first of these, it would be in the interests of all concerned if they were omitted entirely. The scheme of Imperial Federation has not made sufficient progress yet to warrant the colonies in demanding a voice in the advisory chamber of the Empire. Should the time come when such representation was deemed wise, it could eas-

ily be arranged to have these colonial peers sent up by the government of the countries represented. Their only function would be to give accurate and first hand information on subjects of Imperial import. The case of the learned societies may safely be left for recognition to the Cabinet of the day. In fact men such as this would introduce, could add but little to the strength of the House of Lords since their interests lie in fields quite foreign to that of legislation.

4) The Crown in return for its ancient prerogative of "swamping" the House of Peers might reserve to itself the right of appointing more than two hundred life peers from such other sources as those just mentioned, so long as the simple principle of reaching the maximum of four hundred by appointment often a year was not interfered with.

Should Mr. Lowell's fears be realized and the elected peers be all of the same political party contentious matters might be referred to Standing Committees composed of an equal number from each party with a chairman in sympathy with the government, after the manner of the American Senate. The findings of these Standing Committees would then have great weight when reported to the House as a whole, and rarely if ever be rejected. In this way the baleful influence of a preponderance of Tories might be effectually counteracted.

X.

As this paper is being concluded a very drastic measure for the restriction of the veto of the Lords is said to be in preparation by Mr. Lloyd-George and his fellow Radicals. Should the measure be too revolutionary it is reasonably certain to defeat its own ends, for the elections of 1910 cannot be said to have given the Commons any clear mandate to abolish or even greatly curtail the powers of the Upper House. It seems clear that the continuance of democratic governmentn in England without some signal catastrophe depends on the possibility of reorganizing the House of Lords in such a way as to represent the great social and industrial interests in the county and retaining in it sufficient power to provide some check on the unbridled

corner of the popular chamber. The necessity for reform then, is more urgent now than ever before but is not likely to receive cool, carefully weighed and unbiased consideration until some of the present contentious questions have yielded their solution or have fallen into abeyance.